



September 21, 2007

# Order for Removal of Child

Idaho Code § 16-1611

## Purpose

To determine if the summons in a CPA case should include an authorization directing law enforcement to take custody of the child and place the child in the custody of IDHW pending a shelter care hearing. Idaho Code § 16-1611(5); IJR 34

## When

When a CPA petition is filed.

## State Law Requirements

Idaho Code § 16-1606(d)

The judge may order removal of a child at the time of service of summons if:

- ✓ it appears that the child is within the jurisdiction of the CPA. (A child is within the jurisdiction of the CPA if the child is abandoned, abused, neglected, homeless, lacks a stable home environment, or is the sibling of such a child living in or having custodial visitation in the same household. Idaho Code § 16-1603.)
- ✓ it is contrary to the welfare of the child to remain in the home and vesting custody with IDHW would be in the child's best interest. Idaho Code § 16-1611(4)
- ✓ the determination must be made based on facts presented to the court (by testimony or affidavit)

### Best Practice Recommendation:

If it appears that the child is within the jurisdiction of the CPA but it is not in the best interest of the child to be removed from the home, the court should consider whether a protective order pursuant to Idaho Code § 16-1611(5) would aid in protecting the child (the order must be specific as to each parent if the child is in joint custody).

## Federal Law Requirements

ASFA 45 CFR 1356.21(b)(1), (c) &amp; (d)

- ✓ Best Interest / Contrary to the Welfare -- If an order for removal of child is issued, it will be the first order sanctioning removal of the child from the home. In the *first order* sanctioning removal from the home, the court must make a finding that removal of the child is in the **child's best interest** or that it is **contrary to the welfare of the child** to remain in the home.
  - The finding must be **case-specific** and **documented** in the order. The finding can incorporate by reference an affidavit that describes the specific circumstances.
  - **If the finding is not made, the child will not be eligible for federal funds, and the omission cannot be corrected at a later date to make the child eligible.**

## Best Practice Recommendations:

- ✓ For the Order for Removal of Child, use the form provided in the Benchguide, or found on the Idaho Supreme Court's website: [www2.id.us/judicial/material.htm](http://www2.id.us/judicial/material.htm).
- ✓ Require the petitioner to file a supporting affidavit that includes the facts supporting the determinations of jurisdiction, best interest, and reasonable efforts, which can be incorporated by reference in the court's order.

Blank